

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1955 ¹⁷

No. ~~676~~ ⁹⁴ 5

CHARLES ROWOLDT, PETITIONER,

vs.

J. D. PERFETTO, ACTING OFFICER IN CHARGE,
IMMIGRATION AND NATURALIZATION SERVICE,
DEPARTMENT OF JUSTICE, ST. PAUL, MINNE-
SOTA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 9, 1956

CERTIORARI GRANTED MARCH 26, 1956

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 676

CHARLES ROWOLDT, PETITIONER,

vs.

J. D. PERFETTO, ACTING OFFICER IN CHARGE,
IMMIGRATION AND NATURALIZATION SERVICE,
DEPARTMENT OF JUSTICE, ST. PAUL, MINNE-
SOTA

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Judd & Detweiler (Inc.), Printers, Washington, D. C., May 8, 1956

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**UNITED STATES DISTRICT COURT, DISTRICT OF
MINNESOTA, FOURTH DIVISION**

CHARLES ROWOLDT, Petitioner,

VS.

J. D. PERFETTO, Acting Officer in Charge, Immigration and
Naturalization Service, Department of Justice, St. Paul,
Minnesota, Respondent

PETITION FOR WRIT OF HABEAS CORPUS—Filed March 25,
1955

To the Honorable Judges of the United States District
Court, District of Minnesota, Fourth Division:

Your petitioner, Kenneth J. Enkel respectfully shows:

I

That he is the attorney for Charles Rowoldt, the petitioner above named and makes this petition for and on his behalf and at his specific request, as a result of knowledge obtained from said Charles Rowoldt and telephone conversations with a Mr. Stoltz of the United States Immigration and Naturalization Service, St. Paul, Minnesota.

II

That Charles Rowoldt is now imprisoned in restraint of his liberty by virtue of having been taken into custody on Tuesday morning, March 22, 1955, by the respondent, and at the present time is in the Ramsey County jail, St. Paul, Minnesota.

III

That the cause or pretense of the imprisonment and restraint is to effectuate his deportation from the United States pursuant to an Order of Deportation issued by the United States Immigration and Naturalization Service dated March 28, 1952.

[fol. 4]

IV

That said Charles Rowoldt and his said attorney was advised by said Mr. Stoltz of the St. Paul office of the United States Immigration and Naturalization Service that the petitioner would be put on an airplane on Wednesday morning, March 23, 1955, bound for New York, New York, and on Thursday, March 24, 1955 be put on a boat bound for Western Germany.

V

That said Charles Rowoldt had no notice whatsoever prior to being taken into custody this morning, March 22, 1955, that his actual deportation had been effectuated; that the Order of Deportation was issued almost three years ago and though every attempt to effectuate his deportation had been made by both the Immigration Service and Rowoldt himself, nothing came of it until his sudden detention of today as aforesaid; that presumeably the Western German government sent travel documents to the United States Immigration and Naturalization Service to enable Rowoldt to be deported to Western Germany but said Immigration Service gave no notice of that fact to Rowoldt before detaining him this morning, as aforesaid; that said Rowoldt is almost 70 years of age and has been a resident of the United States for almost 40 years, the past 30 of which were spent in Minnesota; that Rowoldt was ordered deported for past membership in the Communist party, said alleged membership having existed for a period of a few months in the depression years of the middle 1930s; that all his friends and acquaintances reside in and about Minneapolis, Minnesota and it will be a severe hardship on him to now be forced to start life anew in what is now a strange country to him even though he was born in Germany.

VI

That the imprisonment and detention of Charles Rowoldt is illegal in that it is for the purpose of effectuating an Order of Deportation, which Order is contrary to and in violation of the United States Constitution, thereby depriving Charles Rowoldt of his liberty and property without due process of law; that said imprisonment and deten-

tion is also illegal in that the procedures had herein, [fols. 5-14] wherein it was determined that said Charles Rowoldt be deported were contrary to and in violation of the United States Constitution, thereby depriving Charles Rowoldt of his liberty and property without due process of law; that said imprisonment and detention is also illegal in that, in view of the facts previously stated herein, it is an abuse of discretion on the part of respondent to so detain in custody said Charles Rowoldt, and such abuse of discretion is arbitrary, contrary to and in violation of the United States Constitution, thereby depriving said Charles Rowoldt of his liberty and property without due process of law.

VII

That no other application for a Writ of Habeas Corpus has been made for and on behalf of said Charles Rowoldt and further he has no adequate remedy except by this application.

Wherefore, it is prayed that a Writ of Habeas Corpus may issue as provided by law, to the end that said Charles Rowoldt may be released from his illegal imprisonment, and for such other and further relief as to the Court may seem just and proper.

Kenneth J. Enkel, Attorney for Charles Rowoldt,
608-10 Builders Exchange, Minneapolis 2, Minne-
sota.

Duly sworn to by Kenneth J. Enkel; jurat omitted in printing.

[fol. 15] UNITED STATES DISTRICT COURT DISTRICT OF MINNE-
SOTA, FOURTH DIVISION

[Title omitted]

RETURN

Comes now, the Respondent above named, J. D. Perfetto, Acting Officer in Charge, Immigration and Naturalization Service, Department of Justice, St. Paul, Minnesota, and

for his Return to the Order to Show Cause issued by the Honorable Gunnar H. Nordbye upon the Petition for Writ of Habeas Corpus in the above entitled matter states:

I

That he is the duly appointed, Acting Officer in Charge, Immigration and Naturalization Service, Department of Justice, St. Paul, Minnesota.

II

That Charles Rowoldt, the Petitioner above named, is in Respondent's custody and in the custody of the Attorney General of the United States such custody having been commenced on Tuesday morning, March 22, 1955; that such custody is not an imprisonment of the petitioner in restraint of his liberty but that such custody of the petitioner was then so taken for the purpose of accomplishing the deportation from the United States of America of the petitioner by reason of the authority, for the purposes and in the manner that is hereinafter set forth.

III

That said custody of the petitioner was taken and said deportation was being made and said custody continues for the purpose of accomplishing such deportation, all under and pursuant to a certain warrant dated April 16, 1952 issued by Joseph A. Cushman, Acting District Director, [fol. 16] Chicago District, Department of Justice by authority of the Attorney General of the United States and the Laws and Regulations applicable (See Act of October 16, 1918, as amended; see Alien Registration Act of 1940, 54 Stat. 670, 673, Sec. 23; and Subversive Activities Control Act of 1950, 64 Stat. 987, 1008, formerly 8 U.S.C. 137; Title 8 C.F.R. Part 150 and Sec. 150.3 and 150.4, 1950 Edition; Immigration and Nationality Act of 1952 and Sec. 405 thereof (8 U.S.C. 1251 and 1252 and note p. 156).

IV

(a) That said warrant was issued pursuant to an Order of Deportation duly made pursuant to proceedings duly held in accordance with the mandates of the law applicable

See Act of October 16, 1918, as amended (cited above), and Act of September 28, 1950, 64 Stat. 987, 1010.

(b) That attached hereto and made a part hereof as Exhibit "A", is a true, correct, and complete record and file of the proceedings so held, and action taken, after January 22, 1951, including a hearing on February 16, 1951, pursuant to a certain warrant issued at Philadelphia, Pennsylvania on the 17th day of April, 1947, by A. R. Mackey, Chief, Exclusion and Impulsion Section, Department of Justice, United States of America, said warrant appears in Exhibit "A" hereto attached immediately following the report therein of said hearing, and upon charges duly made. (See Exhibit "A").

(c) That said Exhibit "A" includes the following:

(1) A transcript of a hearing held by Robert E. Fuller, Hearing Officer, United States Department of Justice, Immigration & Naturalization Service, commencing on February 16, 1951, which hearing was, after the taking of some testimony, continued to, and held on March 28, 1951; the said transcript has attached thereto the Exhibits received in evidence by the hearing officer, being Exhibits 1, 2, 3, 4 and 5.

That Exhibit 1 to said transcript is a true and correct copy of the warrant referred to in Paragraph IV(b) above. (That the original of said warrant, with return thereon, appears in Exhibit "A" next to said Exhibit 1.)

That Exhibit 2 is a copy of Notice of Hearing to be held [fol. 17] at 10:00 A. M. on February 16, 1951, the original thereof having been mailed by registered mail to the petitioner on or about January 23, 1951 and indicating one Mr. Fuller as hearing officer.

Exhibit 3 attached to said transcript is a copy of Petition for Naturalization indicating the German nationality of the petitioner; this exhibit was received in evidence at page 12 of the transcript.

That it appears by said transcript with particular reference to Exhibits 4 and 5 thereof (which were received in evidence upon testimony at pages 20 to 25, and pages 28 to 35, respectively, of the transcript) that evidence was adduced at said hearing that petitioner had, subsequent to his admission to the United States, been a member of the

Communist Party and had been on the Executive Board of The Workers Alliance, had paid dues to the Communist Party and continued to be a member of the Communist Party until he was arrested in deportation proceedings in 1935 and that when he was arrested he finished the Communist party membership but stayed in the Workers Alliance (pages 5 and 6 of Exhibit 4 to said transcript, and Exhibit 5).

That it appears by said transcript that there was no evidence offered tending to disprove the evidence that petitioner was a member of the Communist Party; there was no evidence that petitioner had discontinued Communist Party activities or support; that respondent refused to testify in regard to his Communist Party membership.

Said Robert E. Fuller, as such hearing officer, did, at page 45 of said transcript, certify it to be a true report of everything that was stated during the course of the hearing.

Additional charges were lodged against petitioner at said hearing by the hearing officer, as appears at page 25 of the transcript, as follows:

"I now lodge an additional charge against the Respondent. The charge lodged is that the Respondent is in the United States in violation of the Act of October 16, 1918, as amended, in that he is found to have been after entry a member of the following class set forth in Section 1 of said Act: An alien who was a member of the Communist Party of the United States".

[fol. 18] (2) Exhibit "A" hereto includes the hearing officer's decision dated May 15, 1951, which recites the proceedings in the matter to the date thereof, and

(a) Finds that the respondent is an alien, a native and citizen of Germany; That he last entered the United States about 1923 or 1924, and That the petitioner was a member of the Communist Party of the United States in 1935.

(b) Contains his Conclusion of Law: "That the respondent Charles Rowoldt is subject to deportation under the Act of October 16, 1918, as amended, (See 40 Stat. 1012; 54 Stat. 679, 673; 64 Stat. 987, 1008) in that he is found to have been, after entry, a member of the following class set forth

in Section 1 of said Act: an alien who was a member of the Communist Party of the United States",

(c) As disposition holds that he, Charles Rowoldt, be deported pursuant to said conclusion of law.

(3) Exhibit "A" hereto includes exceptions taken by petitioner to the decision and order of the hearing officer.

(4) Exhibit "A" hereto includes the Order of A. C. Devaney, Assistant Commissioner of Adjudication dated November 27, 1951, ordering that the respondent be deported from the United States pursuant to law on the charge lodged at the said hearing.

(5) Exhibit "A" hereto includes a notice dated November 27, 1951, then sent by registered mail to petitioner's then counsel advising him of the decision and order of the said A. C. Devaney as Assistant Commissioner, Adjudication Division, Immigration and Naturalization Service, U. S. Department of Justice.

(6) Exhibit "A" hereto includes petitioner's notice of appeal therefrom to the Board of Immigration Appeals, dated December 13, 1951.

(7) Exhibit "A" hereto includes copy of notice to petitioner's then counsel dated January 10, 1952, of hearing of the matter to be held before the Board of Immigration Appeals January 31, 1952.

[fol. 19] (8) Exhibit "A" hereto includes transcript of oral argument before the Board of Immigration Appeals.

(9) Exhibit "A" hereto includes Order of the Board of Immigration Appeals dated March 28, 1952, reciting the facts applicable to the appeal; reciting that the appeal was based upon the attack of the constitutionality of the Internal Security Act of 1950, and upon the procedure followed in the hearing, which said Order states: That it is the conclusion that the petitioner has been afforded due process and that the hearing in his case complied with the requirements of a fair hearing; That the record sustains a finding that the petitioner has been a member of the Communist Party, and; That his deportation from the United States is mandatory, and orders that the appeal be dismissed.

V

That respondent's custody of the petitioner, Charles Rowoldt, is in all things in accordance with law for the purpose of accomplishing his deportation from the United States, as required by Title 8 U.S.C. Sec. 1251(a) (6), and by the Act of October 16, 1918, as amended, 40 Stat. 1017, see 64 Stat. 1008, and pursuant to proceedings held in accordance with the Act of February 5, 1917, 39 Stat. 874, as amended, see 64 Stat. 1010, and the Administrative Procedures Act, June 11, 1946, as amended (5 U.S.C. Chapter 19, See Sec. 1010), (64 Stat. 1048) said petitioner was duly determined to be and is a member of the following class: an alien who was a member of the Communist Party of the United States. (64 Stat. 1010, 1008; 54 Stat. 673).

VI

That said warrant, hereinabove referred to (Paragraph IV (a)), is attached hereto as Exhibit "B".

VII

That a passport for the purpose of accomplishing the petitioner's right to enter Germany is attached hereto as Exhibit "C", and that travel document for travel on the S. S. United States by the petitioner is attached hereto as Exhibit "D".

[fols. 20-21] Wherefore, Respondent prays that this Court determine that the respondent duly had and has custody of the petitioner for the purpose of accomplishing his deportation from the United States under and pursuant to a warrant duly issued after petitioner had been duly ordered deported following proceedings duly held in accordance with law for the purpose of determining whether petitioner is an alien subject to deportation, and further prays that the petition for a Writ of Habeas Corpus be denied and the Order to Show Cause hereinbefore issued be discharged.

Dated this 24th day of March, 1955.

George E. MacKinnon, United States Attorney;
Clifford Janes, Assistant United States Attorney,
Attorneys for Respondent.

Duly sworn to by J. D. Perfetto; jurat omitted in printing.

[fol. 22]

U. S. DEPARTMENT OF JUSTICE

Board of Immigration Appeals

DECISION OF BOARD OF IMMIGRATION APPEALS—March 28, 1952

File: A-5706210.

In re: Charles Rowoldt or Ludwig Karl Rowoldt.

In deportation proceedings.

In behalf of respondent: Carol King, Attorney, 220 Broadway, New York, New York, Isidore Englander, Esquire, 205 East 42nd Street, New York 17, New York, Heard on February 6, 1952.

Charges:

Warrant: Act of October 16, 1918, as amended—After entry, alien member of organization that advocates or teaches overthrow by force or violence, of Government of United States.

Lodged: Act of October 16, 1918, as amended—After entry, alien who was member of Communist Party of United States.

Application: Termination of proceedings.

Detention Status: Detained at Government expense.

Respondent is an alien, a native and last a citizen of Germany, sixty-eight years of age. He left Germany in 1914 and lived a few months in Canada. He entered the United States for permanent residence in 1914 and has lived here since, except for a short visit to Canada in 1924. He brought his wife from Germany, and they had a son born in this country. Both are now deceased. He has testified repeatedly that he was a member of the Communist Party for approximately six months in 1935. He has been refused American citizenship.

On July 21, 1936 this alien was ordered deported by the Board of Review, predecessor to this Board, on the ground that he was a member of the Communist Party. The Board was then informed by the State Department that the respondent had lost his German citizenship and a German

passport had been denied him. Therefore, on March 26, 1938 the Board of Review ordered that the case be filed until deportation became practical.

[fols. 23-35] On March 12, 1942 this Board ordered that the proceedings be cancelled on the ground that the alien was not a member of the Communist Party at the time of the hearing. The Supreme Court had held in *Kessler v. Strecker*, 307 U. S. 22, that the Act of October 16, 1918 did not apply to an alien who had ceased to be a member of the Communist Party, that it was only "present membership or present affiliation" which barred naturalization and required deportation. We said that the law had been changed by the Alien Registration Act of 1940 so that *past* membership made an alien deportable, regardless of his present status. However, that law did not apply to respondent, because the charges in the warrant of arrest issued against him were under the old law, and prior to the passage of the 1940 Act.

A new warrant was issued against the alien on April 17, 1947, containing charges under the Act of October 16, 1918, as amended by the Alien Registration Act of 1940. New hearings were accorded the alien, and in the course of those hearings another charge was lodged against him under the Act of October 16, 1918, as amended by the Internal Security Act of 1950. The Assistant Commissioner ordered that the alien be deported from the United States on the charge lodged at the hearing under the 1950 Act. The present order is based on past membership in the Communist Party. Past membership is ground for deportation under the 1940 and 1950 amendments to the 1918 Act. The alien appeals from that decision.

This appeal was based upon an attack on the constitutionality of the Internal Security Act of 1950, and upon the procedure followed in the hearings. On March 10, 1952 the Supreme Court determined the constitutionality of 1940 and the 1950 Act in the cases of *Harisiades v. Shaughnessy*, —U. S.— 20 Law Week 4173, *Carlson and others v. Landon* and *Butterfield, District Director v. Zydok*, —U. S.— 20 Law Week 4210. In these cases the Court also found that there was no basis for the procedural objections which were similar to those made in the present case. It is our con-

clusion that respondent has been afforded due process and that the hearings in his case complied with the requirements of a fair hearing.

The record sustains a finding that the respondent has been a member of the Communist Party. His deportation from the United States is mandatory.

Order: It is ordered that the appeal be dismissed.

Thos. G. Finucane, Chairman.

MBMeC:hc, MBMeC.

[fol. 36] UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

DECISION OF CHIEF AT ADJUDICATIONS DIVISION—November
27, 1951

Appeal 15

File: A-5706210—Chicago (1625-P-12651).

In re: Charles Rowoldt or Ludwig Karl Rowoldt.

In deportation proceedings.

In behalf of respondent: Kenneth J. Enkel, Esquire, 954
Builders Exchange Building, Minneapolis 2, Minnesota.

Charges:

Warrant: Act of October 16, 1918, as amended—After entry, alien member of organization that advocates or teaches overthrow, by force or violence, of Government of United States.

Lodged: Act of October 16, 1918, as amended—After entry, alien who was member of Communist Party of United States.

Application: Termination of proceedings.

Detention status: Released on parole.

Discussion: Upon consideration of the entire record, including the exceptions taken, the recommended order of the officer conducting the hearing is hereby adopted.

In view of our finding of deportability on the 1918 Act charge lodged at the hearing, we see no reason for discussing the charge stated in the warrant of arrest.

Counsel for respondent has submitted a bill of exceptions. Therein exception is taken to the finding that respondent is a citizen of Germany, and to the finding that respondent was a member of the Communist Party of the United States. Counsel also objects to the conclusion of law that respondent is deportable under the provisions of the Act of October 16, 1918, as amended.

Respondent has testified in these proceedings that he was born in Germany, and did not become a citizen of any other country. The record contains a certified copy of respondent's petition for naturalization to the United States District Court of Minnesota, Minneapolis, Minnesota, filed on April 8, 1942, and numbered 12651. This petition, signed [fol. 37] and sworn to by respondent, states his present nationality to be German. On January 10, 1947, respondent made a sworn statement before an officer of this Service, at Minneapolis, Minnesota. During the course of that interrogation respondent stated his citizenship to be German. In his petition for a writ of habeas corpus, addressed to the United States District Court, State of Minnesota, 4th Division, on November 4, 1949, respondent asserted that he is a citizen of Germany. In the light of the foregoing evidence, it seems abundantly clear to us that the record establishes that respondent is in fact a citizen of Germany.

In his sworn statement of January 10, 1947, discussed supra, respondent admitted that he joined the Communist Party at Minneapolis in the Spring or Summer of 1935, and that he remained a member thereof until the end of 1935. In his above-mentioned prayer for the issuance of a writ of habeas corpus, respondent pleads that he ceased to be a member of the Communist Party of the United States in 1935. In these expulsions proceedings respondent refused to answer the question as to whether he had ever been a member of the Communist Party of the United States, on the ground of self-incrimination. It is beyond cavil that the record contains evidence which is legally admissible, substantial, reliable, and probative, and which fully sustains a finding that respondent was in 1935 a member of the Communist Party of the United States. He is

therefore deportable under the provisions of the Act of October 16, 1918, as amended.¹

[fol. 38] It is the claim of counsel that respondent has been denied due process of law, in that there has been a lack of adherence to the minimum standards of impartiality as required by law. Objection is made to the qualification of the hearing officer to accord respondent a disinterested and impartial hearing or to render a disinterested and impartial decision. Counsel points to the fact that the hearing officer is an employee of the Immigration and Naturalization Service. He alleges that this officer is thereby subject to its control and jurisdiction. In addition, counsel challenges the hearing officer who, he asserts, has acted as a prosecuting officer on behalf of the Government in cases in-

¹ The Act of October 16, 1918, was amended by the Internal Security Act of 1950, effective September 23, 1950 (P. L. 831—81st Congress; Chapter 1024—2nd Session, H.R. 9490; 64 Stat. 987 et seq.). Section 22 of the 1950 amendment devises Section 4(a) of the 1918 Act to read:

“Sec. 4. (a) Any alien who was at the time of entering the United States, or has been at any time thereafter, a member of any one of the classes of aliens enumerated in . . . section 1(2) of this Act, shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States.”

Section 1(2) of said Act reads; in pertinent part:

“(2) Aliens who, at any time, shall be or shall have been members of any of the following classes: . . .
(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States . . .”

In other words, the 1918 Act, as amended, requires the deportation of any alien who was, at any time after his entry into this country, a member of the Communist Party of the United States.

volving the same fundamental issues as present in the instant proceedings.

The conduct of the hearing officer was bound by the provisions of 8 C.F.R. 151.2(b), effective November 10, 1950 (published 15 F.R. 7637, November 10, 1950), which set forth the general duties of the hearing officer. It is stated, in pertinent part:

“(b) *Hearing officer; general duties.* The hearing officer shall conduct a fair and impartial hearing. He shall use his independent judgment in rendering his decision and shall not perform any duties inconsistent with the duties and responsibilities of an adjudicating officer. . . .”

In the instant case, there is no evidence that the hearing officer consulted any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; or that the hearing officer engages in the performance of investigative or prosecuting functions; or that he is responsible to, or subject to the supervision or direction of, any federal officer engaged in the performance of investigative or prosecuting functions; or that any person, other than the hearing officer, participated in or advised in the decision of the hearing officer.

[fol. 39] The basis for disqualification of a judge is that he has personal bias or prejudice against one, or in favor of the opposite, party by reason of which he is unable to exercise impartially his functions in the particular case. *Eisler v. United States*, 170 F.(2d) 273 (1948), 83 U.S. App. D.C. 315, cert. dism. 338 U.S. 883 (1949). In the instant case, there is no evidence of any personal bias or prejudice on the part of the hearing officer, either in favor of the Government or against respondent.

As to the complaint of counsel that the hearing officer has been previously engaged as prosecutor for the Government, it is well settled that a judge is not disqualified from presiding at the trial of a case merely because he had formerly acted as attorney for one of the parties in other cases. *Duncan v. Atlantic Coast Line R. Co.*, 223 F. 446 (D.C., S.D. Ga., 1915). *Carr v. Fife*, 156 U.S. 494 (1895). We find that the hearing officer who presided at the instant hearing was qualified to conduct a fair and impartial

hearing and to render a fair and impartial decision, and we further find that he has so done.

The contention has been advanced by counsel that respondent was denied due process of law in that respondent was not advised or informed of the charge he was required to meet until after the conclusion of the Government's case. As a result, counsel argues, respondent was not afforded an adequate opportunity to meet the lodged charge.

We find that the charge in the instant proceeding was properly lodged by the examining officer, in accordance with 8 C.F.R. 151.2(f), which states, in part:

". . . The examining officer shall . . . lodge such additional charges as he may find to be applicable.

The record clearly refutes counsel's complaint that respondent was denied ample opportunity to meet the lodged charge. The record discloses that immediately upon the lodging of the charge at the hearing held on February 16, 1951, counsel requested, and was granted, a continuance. The proceedings were resumed on March 28, 1951. It is abundantly clear that respondent was afforded sufficient time and opportunity to prepare and present a refutation.

The constitutionality of the Act of October 16, 1918, as amended, has been challenged by counsel. Determination of the constitutionality of a statute enacted by the Congress is not within the province of this Service. That is strictly a judicial function. *Panitz v. District of Columbia*, 112 [fols. 40-45] F.(2d) 39, 42 (C.A.D.C., 1940). *Todd v. Securities and Exchange Commission*, 137 F.(2d) 475, 478 (C.A. 6, 1943). Nevertheless, we feel that comment should be made that it has been judicially determined that an immigration law may be retrospective in its application to an alien. *Mahler v. Eby*, 264 U.S. 32, 39 (1924). *United States ex rel. Lubbers v. Reimer*, 22 F. Supp. 573 (D.C., S.D.N.Y., 1938).

Order: It is ordered that the alien be deported from the United States, pursuant to law, on the charge lodged at the hearing.

A. C. Devaney, Assistant Commissioner, Adjudications Division.

AG:cam, S.I.

[fol. 46] UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

1014 New Post Office Building

St. Paul, 1, Minnesota

HEARING OFFICER'S DECISION—May 15, 1951

In re: Charles Rowoldt, formerly, Ludwig Karl Rowoldt,
A-5 706 210

Charges:

Warrant: Act of October 16, 1918, as amended—Found to have been, after entry, a member of the following class set forth in Section 1 of said Act: An alien who is affiliated with an organization, association, society, or group that advises, advocates or teaches the overthrow by force or violence, of the Government of the United States.

Lodged: Act of October 16, 1918, as amended—Found to have been, after entry, a member of the following class set forth in Section 1 of said Act: An alien who was a member of the Communist Party of the United States.

Summary of the Evidence:

The warrant of arrest charging that the respondent has been found in the United States in violation of the immigration laws thereof, as set forth above, was issued on April 17, 1947, and served on November 26, 1948. (Ex. 1) A prior hearing under this warrant of arrest was invalidated by the decision of the United States Supreme Court in *Sung v. McGrath* on February 20, 1950 (339 U. S. 33), because it had been held without regard to the provisions of Sections 5, 7, and 8 of the Administrative Procedure Act of 1946. On September 23, 1950, Congress passed the Internal Security Act of 1950, Section 22 of which further amends the Act of October 16, 1918. On September 27, 1950, Public Law 843 of the 81st Congress was approved, which exempted proceedings under law relating to the expulsion of aliens from the provisions of Sections 5, 7, and 8 of the Administrative Procedure Act of 1946. The hear-

ing in these proceedings was held in St. Paul, Minnesota, on February 16, 1951, and March 28, 1951. It was conducted, and this decision is being prepared, pursuant to the regulations as amended, after approval of Public Law 843, supra. 8 C.F.R. 151. The second deportation charge above was lodged during the hearing on February 16, 1951, (p. 25), based upon the amendment to the Act of October 16, 1918, which is contained in Section 22 of the Internal Security Act of 1950.

[fol. 47] At the hearing held on February 16, 1951, the respondent testified that he was born in Germany on July 19, 1883; that his parents were natives and citizens of Germany and never resided in the United States; that he is not a citizen of any country, but was last a citizen of Germany; and that he has never become a citizen of any other country. (pp. 8, 9, 10, 11) The respondent emigrated to the United States from Hamburg, Germany, and entered the United States for permanent residence at New York, New York, on February 1, 1914, on the SS "Pretoria". (p. 12 and Ex. 3) He testified that, since February 1, 1914, he was absent from the United States in Canada for several weeks and returned to the United States through Portal, North Dakota, in the early twenties. (pp. 12, 13, 14).

The respondent stated in a recorded examination under oath at Minneapolis, Minnesota, on January 10, 1947, in answer to questions by Leonard L. Adams, a Special Inspector of the Immigration and Naturalization Service, that he is a native and citizen of Germany; that he last entered the United States at Portal, North Dakota, in or about 1924; that he joined the Communist Party in Minneapolis in the spring or summer of 1935 and remained a member until the end of 1935; and that, as a member of the Communist Party, he ran the Communist Party book store in Minneapolis for awhile. (Ex. 4 at pp. 4, 5, 6, 8)

Exhibit 5 is a certified copy of the petition for a writ of habeas corpus of Charles Rowoldt against Irvin F. Shrode, Officer in Charge, St. Paul Office, Immigration and Naturalization Service, Department of Justice, dated and verified on November 4, 1949, and filed in the United States District Court, State of Minnesota, Fourth Division, on November 8, 1949. The respondent refused to answer whether he filed such petition. (pp. 30-33) Exhibit 5 is con-

nected with the respondent, adequately by each, by the identity of the signature of Charles Rowoldt on the Verification of the above petition with the signature of Charles Rowoldt on page 11 of Exhibit 4, which latter the respondent admitted was his signature (pp. 20 & 21), and by the record as a whole; in particular by identity of name, warrant, birth, entry, and employment. The respondent stated in this petition for a writ of habeas corpus, which was verified by him under oath, that he is a native and citizen of Germany; that he last entered the United States at Portal, North Dakota, about November, 1923; and that, "in truth and in fact", he ceased membership in the Communist Party of the U.S.A. in 1935.

At the hearing held on March 28, 1951, the respondent refused to answer whether he has ever been a member of the Communist Party of the United States and whether he has ever been a member of the Communist Party of the United States in 1935, on the ground that the answers might possibly incriminate him. (pp. 35-39).

[fol. 48] I find that the testimony of the respondent in the instant proceedings and Exhibit 4 and Exhibit 5, each separately supports a finding that the respondent is an alien, a native and citizen of Germany, who last entered the United States at Portal, North Dakota, in or about 1923 or 1924, and that Exhibit 4 and Exhibit 5, each separately supports a finding that the respondent was a member of the Communist Party of the United States in 1935.

Section 4 of the Act of October 16, 1918, as amended by Section 22 of the Internal Security Act of 1950, provides:

"Sec. 4(a) Any alien who was at the time of entering the United States, or has been at anytime thereafter, a member of any one of the classes of aliens enumerated in * * * Section 1(2) of this Act, shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States."

Section 1(2) of the Act of October 16, 1918, as amended by Section 22 of the Internal Security Act of 1950 reads in pertinent part:

"That any alien who is a member of any one of the following classes shall be excluded from admission into the United States:

(2) Aliens who, at anytime, shall be or shall have been members of any of the following classes:

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States,

I conclude that the evidence of record sustains the lodged charge of deportability because of former membership in the Communist Party of the United States after entry into the United States. I deem it unnecessary to make findings as to the other charge.

By the provisions of Subsection (d) of Section 19 of the Act of February 5, 1917, as amended, the respondent is ineligible for relief from deportation under the provisions of Subsection (c) of Section 19 of that Act, because he is [fols. 49-99] deportable under the Act of October 16, 1918, as amended. The respondent has specified Germany as the country to which his deportation is to be directed, in the event his deportaion is required by law. (p. 45)

Findings of Fact

* Upon the basis of the evidence presented, it is found:

(1) That the respondent is an alien, a native and citizen of Germany;

(2) That the respondent last entered the United States in or about 1923 or 1924;

(3) That the respondent was a member of the Communist Party of the United States in 1935.

Conclusion of Law

Upon the basis of the foregoing findings of fact, it is concluded:

That the respondent is subject to deportation under the Act of October 16, 1918, as amended, in that he is found to have been, after entry, a member of the following class set forth in Section 1 of said Act: An alien who was a member of the Communist Party of the United States.

Disposition: That the respondent be deported from the United States pursuant to law on the following charge:

The Act of October 16, 1918, as amended, in that he is found to have been, after entry, a member of the following class set forth in Section 1 of said Act: An alien who was a member of the Communist Party of the United States.

Robert E. Fuller, Hearing Officer.

May 15, 1951.

[fol. 100] STATEMENTS OF CHARLES ROWOLDT GIVEN BEFORE SPECIAL INSPECTOR LEONARD L. ADAMS AT MINNEAPOLIS, MINNESOTA, ON JANUARY 10, 1947

Examination conducted in the English language.

Inspector to Deponent: You are informed that I am a United States Immigrant Inspector authorized by law to administer oaths in connection with the enforcement of immigration and naturalization laws. I desire to question you relative to your right to be and remain in the United States. You are further informed that any testimony which you give at this time may be used against you in any proceeding which the Federal Government may institute. Do you understand?

A. Yes.

Q. With that understanding and under those conditions, are you willing to give testimony?

A. I no longer desire to stay in the United States any longer than I have. I am going back to Europe as soon as

I can settle my affairs in this country. I am no longer interested in even getting my citizenship papers. You can write this all down so you can see that I am honest about it. You have noticed that I never fought hard to get my citizenship papers.

Q. Let me interrupt. This statement, as I have informed you, has reference to your right to be and remain in the United States. Will you please advise whether under the conditions which I have stated, you are willing to give testimony? I want to question your right to be and remain in the United States, as I told you, and then I asked whether or not you are willing to give testimony at this time.

A. I can see no testimony necessary in my case. I am doing nothing else but working in the United States.

Q. However, I do desire, as I have stated, to question your right to be and remain in the United States, and I ask at this time whether or not you are willing to give testimony. Can you answer that?

A. I told you just now. I don't want to give testimony whatsoever on that Communist stuff again. That is finished for me as far as I am concerned. I am telling you that I have been working here 32 years—since 1914, and you can ask me what kind of work you are doing, how much wages you are getting, does your boss like you, but I don't want to be asked anything else about politics because I am not interested. I am too old to be interested. I am not interested whether the Republicans get in office, or the Democrats, or the Communists, or the Socialists. I do not want anything else to be asked because I don't want to be in this country. I am just in this country for the people's benefit. I am working and paying taxes all the time for them. Why should I go through this and get trapped through your questioning? I do not want to be asked anything about politics. It is 10 years ago now. I don't care what they have in their minds. I don't want to answer any trapping questions. If they don't want me in this country, they can take me and ship me any time. I have never fought hard for my citizenship papers. I will tell you [fol. 101] this. This is not new, my wanting to go back to the old country. When we came to the shores of America, and my little wife, she came 1½ years later, always said

she wanted to go back to Germany. I had always had in mind to go back to the old country. Then came all this trouble, and I couldn't go back. This is the reason I didn't fight hard for my citizenship papers. Now that swine Hitler is out of the way, I am going back and spending my last years in my own language country. I don't want to have anything to do with any politics. Write that back to them, Mr. Adams. I don't care for citizenship papers because I always had in my mind to go back to Germany. I don't need them now and I don't want to be asked any questions about them now—Communist questions—why should I answer such questions now.

Q. Mr. Rowoldt, I gather from what you say that you have always had in mind returning to Germany?

A. Always since I came to these shores. Of course it might have never been possible. It was not possible for many, many years, but it was always that longing.

Q. Mr. Rowoldt, are you willing to make such a statement under oath?

A. Under oath? Why not? I can swear to this because it was always in me all the time—because I had that longing in me all that time.

Q. (Attempt made to take oath.)

A. I won't swear to anything.

Q. When you filed your petition for naturalization on April 6, 1942, did you at that time have in mind returning to Germany?

A. No, I might have had in mind, but Hitler was ruling that country. I surely would not go back to Hitler. Now I took up that thought, now that a fellow can visit his people proudly.

Q. When do you intend to return to Germany? Have you any plans?

A. I thought—this is '47, probably in '48 or so, in a couple, three years. I now have that in my mind. I might die before that. I am thinking now in a year or two or three, it might be possible to go over there. That is the way I am thinking now. That is why I wanted to tell you right off the bat, not to worry about the citizenship papers. I now have a chance to go for the last few years which I am living, back to my own land; and I probably can find a little easier work.

I have a pretty good education in my own language. Here I have to work as a slave in my old days.

Q. Do you, at this time, have intentions of pressing to a completion, your petition for naturalization?

A. No, I have no intention of pressing. If they give it to me, good and well—that is why I never pressed—all these years.

Q. If you were to be heard in court today on your petition for naturalization, could you, in all good faith, take the oath that it is your intention to reside permanently in the United States?

A. No, I couldn't say that because I have my mind set to go back to Germany.

[fol. 102] Q. Do you at this time desire to request a dismissal of your petition for naturalization?

A. No, not exactly. I do not ask dismissal.

Q. Are you willing to sign this statement, as given?

A. Yes.

Charles Rowoldt.

Leonard L. Adams, Special Inspector.

I hereby certify that the foregoing pages 1 thru 3 incl. are a true transcript of my notes taken at Minneapolis, Minnesota, on January 10, 1947, and are recorded in my shorthand book #5.

Ruth F. Simos, Stenographer.

[fol. 103] Further testimony given by Charles Rowoldt before Special Inspector Leonard L. Adams at Minneapolis, Minnesota on January 10, 1947.

Inspector to Deponent: As I understand you, Mr. Rowoldt after reading the statement you previously gave, which you signed, you are now willing to give a statement under oath. Is that correct?

A. Yes.

Q. Will you please stand and be sworn. Do you solemnly swear that all the statements you are about to make in this proceeding will be the truth, the whole truth and nothing but the truth, so help you God?

A. I do.

Q. What is your full and correct name?

A. Ludwig Karl Friedrich Martin Rowoldt.

Q. You are known by what other name?

A. In America I am known as Charles Rowoldt.

Q. What is your address?

A. 53 North 12th Street, Minneapolis.

Q. What is your occupation?

A. Houseman at the Dyckman Hotel, Minneapolis, Minnesota.

Q. When and where were you born?

A. I was born July 19, 1883 at Dorf, Tatschow, Post Office Schwaam, Mecklenburg-Schweirn, Germany.

Q. Are your parents living?

A. I don't think so. I haven't heard from them.

Q. What was your father's name and place of birth?

A. Friedrich Rowoldt—he might have been born in Reimzhagen, Mecklenburg, Germany.

Q. Of what country was your father a citizen?

A. Of Germany.

Q. What was your mother's maiden name and her place of birth?

A. Marie Gippe, born in the same place where I was born in Germany.

Q. Did either of your parents ever reside in the United States?

A. No.

Q. Were either of your parents ever citizens of the United States?

A. No.

Q. Of what country are you a citizen?

A. Germany

[fol. 104] Q. According to the records of this Service, you filed petition for naturalization on April 8, 1942, in U. S. District Court, Minneapolis, Minnesota. Is that correct?

A. Yes.

Q. Also, according to this file, your arrival at New York on February 1, 1914 ex SS Pretoria under the name Ludwig Rowald was verified. Is that arrival information correct?

A. Yes.

Q. Have you ever left the United States since your arrival?

A. I went over in the twenties, threshing for a few days in Canada.

Q. What year was that?

A. Approximately in the early twenties. That is the only time I went over the border from the United States.

Q. Where did you reenter the United States from Canada?

A. At Portal, North Dakota.

Q. How were you travelling at the time of this reentry?

A. I was travelling with a private Ford car.

Q. Were you inspected by an immigration officer at the time of this entry?

A. Surely, we went back through the immigration office.

Q. How long were you in Canada at that time?

A. Four or five weeks.

Q. Can you give me a better idea of the year this occurred?

A. There is no way of establishing the correct year now. I said before, it was in 1924.

Q. You believe this to be the approximate date?

A. That is about correct.

Q. Were you ever refused admission to the United States?

A. No.

Q. Have you ever been deported from the United States?

A. No.

Q. Have you ever been arrested or in jail for any crime or offense anywhere?

A. No, except the time in 1935 I was arrested in deportation proceedings.

Q. Are you a member of any organizations or societies of any kind at the present time?

A. Yes, I belong to the A.F.L. Local No. 665, Miscellaneous Hotel & Restaurant Workers.

Q. To what organizations have you belonged in the past?

A. In the past, the Workers' Alliance, the Communist Party.

[fol. 105] Q. When did you join the Workers' Alliance?

A. In the spring or summer of 1935, I joined both the Workers' Alliance and the Communist Party.

Q. Where did you join these organizations?

A. In Minneapolis.

Q. Did you hold any office in either of these organizations?

A. Not in the Communist Party but in the Workers' Alliance, I was on the Executive Board, and once in a while I was secretary for some local.

Q. What — the purpose of your joining the Communist Party at that time?

A. We had no books then, just paid dues, and somebody collected.

Q. Did you carry a party dues book at that time?

A. No, but in the Workers' Alliance we had dues books.

Q. Did you carry a Communist Party card at that time?

A. I don't think we had cards at all.

Q. For how long were you a member of the Communist Party?

A. From then on until I got arrested and that was at the end of 1935. When I was arrested, I finished the Communist Party membership, but I stayed in the Workers' Alliance.

Q. How long did you continue your membership in the Workers' Alliance?

A. Probably a couple of years longer—then it dissolved itself.

Q. What — the purpose of your joining the Communist Party?

A. The purpose was probably this—it seemed to me that it came hand in hand—the Communist Party and the fight for bread. It seemed to me like this—let's put it this way—that the Communist Party and the Workers' Alliance had one aim—to get something to eat for the people. I didn't know it was against the law for aliens to join the Communist Party and the Workers' Alliance. I found that out when Mr. Adams told me.

Q. What were your political beliefs at the time you joined the Communist Party?

A. My political beliefs were always somewhat for the benefit of most of the people—always for the benefit to help most of the people.

Q. Apparently you were a member of the Communist Party for approximately one year. Is that correct?

A. Yes, probably something like that.

Q. What is your present attitude towards Communism. How do you feel about that?

A. I explained that a couple of years ago to those people

over there (indicates Mr. C. A. Frederickson). I believe today, and this is my honest opinion, I believe today that Communism and Capitalism, as we call it, will come together in spite of all the world war threats, and even preparations—to solve their problems, thus a better world without a third world war. That is my opinion today and that much hope I have in the statesmen of the world today. That is the best way I can put that. That is my honest belief.

[fol. 106] Q. What is your belief and understanding of the principles of communism?

A. If you read Marx or any of the writers of Lenin and Stalin, you will find this—that out of a world of struggle between two classes will emerge finally—first it will be a dictatorship, totalitarian, which, as time goes by, will wither and regulate the economics of the world for the benefit of all people, which were formerly rich or poor.

Q. Is it your opinion that before communism and a capitalistic form of government will be able to exist in the same world, that a dictatorship must necessarily evolve from a capitalistic form of government?

A. I answered that before. I said that Hitler was such a dictatorship of capitalism, that is what he didn't want. Now Hitler is overthrown and the main obstacle of the progressive form of march in the world has been more secured, I don't think it is necessary that a capitalistic dictatorship has to come because progressive forces in the capitalistic countries of today will eventually be able to cooperate with the communistic forces, and settle in more or less a peaceful manner, the business of the world. That is my honest opinion. Men come and go, and the people always stay. The people finally, in the last analysis, want peace and security. They will find a representative who will take care of that.

Q. Let me ask you this. What is your opinion as to the form of government which today we have in the United States?

A. As far as I have found in the world, the American system of government, as far as the capitalistic system is concerned and even the communistic, is still the best in the whole world, including the communistic system, because there is not a good one yet.

Q. Are you of the opinion that our form of government is perfect?

A. No, of course not, but we have a Constitution which is almost perfect, and by that measurement, we can make it perfect.

Q. Do you think that the Constitution under which we reside in the United States should be changed in any way, other than by the vote of the people?

A. No, the Constitution should not be changed by just a man or two. The people of the United States should have the say in that.

Q. Do you have any opinion as to whether or not this country is headed for a change in the form of government?

A. I can't have no opinion on that. For the time being there is no such thing.

Q. Do you have an opinion as to whether or not a form of government should be changed in any way other than by the will of the people?

A. A form of government should not be changed in any way except by the will of the great majority of the people. I think President Lincoln said that.

Q. If a minority people of a government desire a change in the form of their government, do you think it would be wise and advisable to resort to force?

A. No, that would not be wise or advisable. No, a minority should not go against the majority by forcing violence. [fol. 107] Q. Do you think it would be the right of a majority of people residing under a government to overthrow the government by force?

A. No, not by force either. They should be able to do it peacefully, not by force.

Q. Were you an active worker in the Communist Party?

A. The only active work I did was running the bookstore for a while.

Q. Where did you run a bookstore?

A. 241 Marquette, Minneapolis.

Q. What sort of bookstore was it?

A. Oh, all kinds of literature—all kinds of writers in the whole world—Strachey, Marx, Lenin's writing and others. Socialism and all that stuff.

Q. Did you own the bookstore?

A. No, I didn't get a penny there.

Q. What was the arrangement there?

A. I was kind of a salesman in there, but the Communist Party ran it.

Q. You secured this employment through your membership in the Communist Party?

A. Yes.

Q. Was this store an official outlet for communist literature?

A. Yes.

Q. What is your opinion of a revolution, such as occurred in Russia when the Communists obtained power?

A. What is my opinion of the Russian revolution—that is about it. As much as I know about it, the Russian revolution, in my opinion, is this. It seemed that at the end of the war of 1914, the Russian middle-class especially and the Russian soldiers were sick and tired of being double-crossed and betrayed by their generals and what not (they went in with the Germans). Russian soldiers spilled their blood running against the Germans without ammunition, and there was chaos in the country. I said middle-class—that they organized and succeeded in overthrowing that particular leadership which was headed by the Czar. But this is my opinion. This was under the leadership of Kerensky. Seemingly, Lenin and his followers which represented more the lower peasant and factory workers, were not satisfied with this set-up, and kept on working for another revolution which finally overthrew the whole upper class in the fall of 1918, and so divorced themselves for the first time in world's history, economically and politically, from the rest of the world. That is the way I see it. That is my opinion on that.

Q. Do you advocate change of government by force or violence?

A. No, never did.

Q. Do you feel that the present government of the United States will ever be overthrown by force or violence?

A. On account of our Constitution and the very intelligent American people, we don't have to do that.

[fol. 108] Q. Do you have any opinion as to whether or not it will ever occur?

A. It could because after all, nobody can see into the future, but I don't believe it could.

Q. At the present time, are you in sympathy with the principles of communism?

A. Communism doesn't tell me anything. Communism nor capitalism don't tell me anything. I am a progressive, and I want to see a better world. If I don't see it in this life, because I believe in reincarnation, I hope to see it when I come back—where all people can get to the resources of this life—that means education and life as we should have it. I like some of the sayings of Jesus. He said that he wanted that all people should be helped. Principles of communism and capitalism doesn't mean anything to me. They have too many points—first, dictatorship, hit the other fellow down.

Q. Do you feel that communism is a better or poorer form of government than a democracy?

A. The communistic government, as we know it now, is not better than a capitalistic government as we know it. It is not better.

Q. Do you feel that communism can ever replace and be a better form of government than a democracy?

A. That is a question to which it is hard to answer because we cannot see into the future. The only way that I could answer that is—the trend in the world today seems to be to some sort of change, like socialism or communism, and if that trend should continue to engulf the whole world, it would be up to the people to make whatever develops out of it—a real government for themselves, which would be better than what capitalism today gives them.

Q. Do you believe, without reservation, in the form of government we have in the United States today?

A. Yes, I believe, without reservation, in the form of government we have in the United States today. It is good enough for me.

Q. Do you feel that your beliefs in government have changed during the past ten years, that is, since you terminated membership in the Communist Party?

A. Yes, it has changed to that extent—that I began thinking for myself instead of following somebody else tell-

ing me things. I found that nothing can be broken over a knee, and that any government that exists today as a right to exist as it is—by the power of the majority of a nation's people. Nobody in the world can say there are no changes. We must always consider changes. They can be made when the people see that it is the right time for it, and at that time they will have their representatives which will take care of it. I am absolutely against sudden dictatorship and overthrow of government.

Q. Again referring to your joining the Communist Party in 1935, was this motivated by dissatisfaction in living under a democracy?

A. No, not by that. Just a matter of having no jobs at that time. Everybody around me had the idea that we had to fight for something to eat and clothes and shelter. We were not thinking then—anyways the fellows around me, of overthrowing anything. We wanted something to eat and something to crawl into.

[fol. 109] Q. You say "fight for something to eat and crawl into". What do you mean by that term?

A. We had to go and ask those who had it—that was the courthouse at that time. We petitioned city, state and national government. We did and we succeeded. We finally got unemployment laws and a certain budget. Even at the few communist meetings I attended, nothing was ever said about overthrowing anything. All they talked about was fighting for the daily needs. That is why we never thought much of joining those parties in those days.

Q. What is your opinion as to whether communism was the cause or outgrowth of the Russian revolution?

A. Communism did not start the revolution. The middle-class started the revolution. Lenin got hold of it. Communism was the result of the revolution.

Q. Were you an organizer for the Communist Party?

A. No.

Q. What is your personal belief as to the principles of communism?

A. What is communism? That is a good question. My belief is a different thing than communism is. According to Marx and Lenin and as I have seen the Communists working, since I knew of them, they are aiming, more or less, with forever methods to set up an economic system

to get the people out of a monopoly control on to their own economic feet. That is the way I see them working now.

Q. What is the extent of your education?

A. Something like high school in Germany.

Q. Where in Germany?

A. I went to school in this particular Schweirn, and Rostock. Also in Hamburg.

Q. What church did you attend in Germany?

A. Lutheran.

Q. Do you know when and where you were baptized?

A. Cambs, Mecklenburg, Germany.

Q. How many times have you been married?

A. Once.

Q. When and where were you married?

A. We married on December 31, 1912 in Wahren-Leipzig to Jennie Sterz.

Q. She passed away?

A. She passed away on November 11, 1918 in Chicago, Illinois.

Q. Do you have any children?

A. I had one son, Walter, who was born in Chicago, on July 22, 1915. He died in Minneapolis on February 18, 1928.

Q. Have you any relatives in the United States?

A. No.

[fols. 110-119] Q. Have you any relatives remaining in Germany?

A. I don't know anyone now.

Q. Who did you have in Germany?

A. I had two brothers and one sister, but I never heard from them. I had uncles, but they must all be dead.

Q. Do you own any property anywhere?

A. I own a little piece of land outside of town—four acres of land outside of town.

Q. Do you have a passport or any other document identifying you as a native of Germany?

A. I don't have anything right now in my possession.

Q. Have you registered under the Alien Registration Act of 1940?

A. Yes, my number is 75706210.

Q. According to the office file in your case, you also

obtained a Certificate of Identification as a citizen of Germany?

A. Yes, I had that too.

Q. Are you registered under Selective Service?

A. Yes, I also have that.

Q. Are you willing to sign this statement when transcribed?

A. I will come down next Tuesday morning, January 14, 1947, to sign it.

Charles Rowoldt.

Leonard L. Adams, Special Inspector.

I hereby certify that the foregoing pages 4 thru 11 incl. are a true transcript of my notes taken at Minneapolis, Minnesota, on January 10, 1947, and are recorded in my shorthand book #5.

Ruth J. Serrios, Stenographer.

[fols. 120-165] UNITED STATES OF AMERICA

Department of Justice

Washington

WARRANT OF DEPORTATION OF ALIEN—April 16, 1952

No. 1625/P-12651, A5 706 210

To: Officer in Charge, Immigration & Naturalization Service, St. Paul, Minn.

Or to any Officer or Employee of the United States Immigration and Naturalization Service.

Whereas, after due hearing before an authorized Hearing Officer, and upon the basis thereof, an order has been duly made that the alien Charles Rowoldt, or Ludwig Karl Rowoldt who entered the United States at Portal, N. D. on about the 1st day of Nov 1924 is subject to deportation under the following provisions of the laws of the United States to wit:

The Act of October 16, 1918, as amended, in that he has been, after entry, a member of the following class set forth

in Section 1 of said Act: An alien who was a member of the Communist Party of the United States.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his direction, do hereby command you to deport the said alien to Germany at the expenses of the appropriation, Salaries and Expenses, Immigration and Naturalization Service, 1952.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 16th day of April 1952.

Joseph A. Cushman, Acting District Director, Chicago District.

[fols. 166-186] UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

FOURTH DIVISION

[Title omitted]

Transcript of Proceedings of April 1, 1955

The above-entitled matter came on for hearing before the Honorable Gunnar H. Nordbye, Chief Judge of the above court, in the United States Court House in Minneapolis, Minnesota, on April 1, 1955.

APPEARANCES:

Kenneth J. Enkel, Esq., Metropolitan Building; Minneapolis, Minnesota, Attorney for Petitioner.

Mr. George E. MacKinnon, United States Attorney, and Mr. Clifford F. Janes, Assistant United States Attorney, St. Paul, Minnesota, appeared on behalf of Respondent.

[fol. 187] Mr. Enkel: At this time the petitioner moves to amend his petition for writ of habeas corpus by adding the further reason why the writ of habeas corpus should issue as provided by law. The additional reason is as follows:

“The evidence produced at the administrative hearings are insufficient to sustain the deportation order against the petitioner.”

Mr. Janes: I might state that the Government's position on that is that I noticed that in his motion the petitioner [fols. 188-195] referred to "administrative hearings," in the plural. I know of only one administrative hearing involved here. To make that amendment in that way a part of the petition I think is introducing matter that would not properly be before the Court.

The Court: I will deny the motion.

Mr. Enkel: I object on the ground if the Government will check their return they will find there are two separate hearings.

The Court: If you are now referring to the record as before the Court—

Mr. Enkel: I understand that I have no other alternative. If I have more I will certainly take it, but I understand I have been limited by the Court.

The Court: The Court will allow the amendment insofar as you challenge the sufficiency of the present record to sustain the order of deportation. To that extent the Court will allow the amendment.

[fol. 196] UNITED STATES DISTRICT COURT, DISTRICT OF
MINNESOTA, FOURTH DIVISION

No. 5108 Civil

[Title omitted]

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS—
May 18, 1955

The above matter came on for hearing before the Court on a petition for a writ of habeas corpus filed by the above-named petitioner returnable March 25, 1955.

Mr. Kenneth J. Enkel, Minneapolis, Minnesota, appeared in behalf of the petitioner;

and

Mr. George E. MacKinnon, United States Attorney, and Mr. Clifford Janes, Assistant United States Attorney, St. Paul, Minnesota, appeared in behalf of the respondent.

[fol. 197] At the hearing on the petition the matter was sub-

mitted on the affidavit in support of the petition and return made by the respondent. The petitioner stated in open court that he did not care to offer any oral testimony. Thereafter, and on March 30, 1955, the attorney for petitioner filed a notice of motion returnable April 1st for an order reopening the hearing before the Court and granting petitioner sufficient time before the reopened hearing to make an appropriate motion to obtain the production of documents as well as to submit a second supplemental petition for a writ of habeas corpus. At the hearing on the motion returnable April 1st, the Court permitted the petitioner to amend his original petition for a writ of habeas corpus by adding an additional reason for the issuance of the writ, to wit, "The evidence produced at the administrative hearings is insufficient to sustain the deportation order against the petitioner." The Court concluded that, by such amendment, petitioner was granted substantially the additional relief sought by the so-called supplemental petition. Otherwise, petitioner's motion was denied.

The return of respondent herein indicates that the petitioner at the time of the filing of the original petition was in custody and being deported pursuant to a warrant dated April 16, 1952, issued by Joseph A. Cushman, Acting District Director, Chicago District, Department of Justice, by authority of the Attorney General of the United States, pursuant to hearing and determination that the petitioner was and is an alien of a class required by law to be deported, to wit, a person who had been a member of the Communist Party since his last entry into the United States. The return indicated that petitioner had a full and complete hearing, after due notice, by a hearing officer, at which hearing and proceeding petitioner was at all times represented by counsel. The contention now made by petitioner that he has been denied certain constitutional rights has been set at rest by *Galvan v. Press*, 374 U.S. 522; *Harrisades v. Shaughnessy*, 342 U.S. 580. Moreover, petitioner's contention that the Act under which he is being deported constitutes a bill of attainder is without merit. The case of *Garner v. Los Angeles Board*, 341 U.S. 716, which petitioner cites and in which will be found an exposition of bills of attainder, sufficiently disposes of petitioner's contention in this regard. No purpose will be

served in discussing the other constitutional questions which have been so fully considered and disposed of contrary to petitioner's contention in *Galvan v. Press*, supra, and *Harisiades v. Shughnessy*, supra. Furthermore, the Court concludes that the evidence produced at the hearings in question amply sustains the deportation order in view of the language of the Supreme Court in *Galvan v. Press*, supra, at page 528,

"It must be concluded, therefore, that support, or even demonstrated knowledge, of the Communist Party's advocacy of violence was not intended to be a prerequisite to deportation. It is enough that the alien joined the Party, aware that he was joining an organization known as the Communist Party which operates as a distinct and active political organization, and that he did so of his own free will. A fair reading of the legislation requires that this scope be given to what Congress enacted in 1950, however severe the consequences and whatever view one may have of the wisdom of the means which Congress employed to meet its desired end."

Petitioner sets forth in his so-called supplemental petition for a writ of habeas corpus that he has made a motion to reopen his case before the Board of Immigration Appeals to enable him to make an application for suspension of deportation, pursuant to Section 244 of the Immigration and Nationality Act of 1952 (8 U.S.C.A. 1254). He requests this Court to stay the deportation order pending decision on his motion. However, this Court is not referred to any authority which authorizes it to grant a stay for such purpose. Moreover, it may be pointed out that over two years have elapsed since the enactment of Section 1254, 8 [fols. 199-209] U.S.C.A., and no steps heretofore have been taken by petitioner to accomplish a suspension of the order of deportation upon the grounds of hardship. The Court, therefore, would not be justified in granting any stay in addition to a reasonable time within which petitioner may prepare himself and put his affairs in order awaiting deportation.

It follows from the foregoing that petitioner's application for a writ of habeas corpus must be, and the same hereby is, denied, and the restraining order entered on the

order to show cause dated March 22, 1955, is vacated and discharged. It is so ordered.

A thirty-day stay of the deportation order is hereby entered.

An exception is reserved.

Dated this 18th day of May, 1955.

By the Court: Gunnar H. Nordbye, Chief Judge.

[File endorsement omitted]

[fol. 210] UNITED STATES COURT OF APPEALS FOR THE EIGHTH
CIRCUIT

No. 15,383

CHARLES ROWOLDT, Appellant,

vs.

J. D. PERFETTO, Acting Officer in Charge, Immigration and
Naturalization Service, Department of Justice, St. Paul,
Minnesota, Appellee

Appeal from the United States District Court for the
District of Minnesota.

OPINION—December 22, 1955

Kenneth J. Enkel for Appellant.

Clifford Janes, Assistant United States Attorney
(George E. MacKinnon, United States Attorney, was with
him on the brief), for Appellee.

Before Sanborn, Johnsen and Van Oosterhout, Circuit
Judges.

[fol. 211] SANBORN, Circuit Judge:

Counsel for Charles Rowoldt, an alien who was in custody
under a warrant for deportation issued April 16, 1952, by
the Acting District Director, Chicago District, Immigration
and Naturalization Service, Department of Justice, peti-
tioned the District Court for Rowoldt's release on habeas

corpus. The court issued an order to show cause directed to the respondent (appellee). After the filing of the respondent's return and after a hearing, the court denied the petition for a writ, and Rowoldt has appealed.

The deportation warrant followed proceedings conducted by the Immigration and Naturalization Service of the Department of Justice such as are customary in like cases. Rowoldt was accorded a hearing before a Hearing Officer on February 16, 1951, and March 28, 1951. He was represented by counsel of his own choosing. One of the charges against Rowoldt was that he was an alien who, after entry into the United States, was a member of the Communist Party of the United States, a charge which, if sustained, required his deportation, since Section 22 of the Internal Security Act of 1950, 64 Stat. 987, 1006, 1008, amending the Act of October 16, 1918, as amended, provides that the Attorney General shall take into custody and deport any alien "who was at the time of entering the United States, or has been at any time thereafter, * * * a member of any one of the classes of aliens enumerated in section 1 (2) of this Act * * *." (Page 1008.) Subparagraph (C) of section 1 (2) lists "Aliens who are members of or affiliated with (i) the Communist Party of the United States * * *."

(Page 1006.)

[fol. 212] Upon the evidence adduced before the Hearing Officer in the deportation proceedings, he, on May 15, 1951, found as facts: (1) That Rowoldt is an alien, a native and citizen of Germany; (2) that he last entered the United States in or about 1923 or 1924; and (3) that he was a member of the Communist Party of the United States in 1935.

The Hearing Officer concluded that Rowoldt was subject to deportation under the applicable statute, and should be deported. Rowoldt on May 21, 1951, filed exceptions to the decision and order of the Hearing Officer. On November 27, 1951, the proceedings before that Officer were reviewed in detail by the Assistant Commissioner, Adjudications Division of the Department of Justice Immigration and Naturalization Service, who ordered Rowoldt deported on the charge found by the Hearing Officer to have been sustained.

Rowoldt appealed to the Board of Immigration Appeals, Department of Justice, from the order of deportation of November 27, 1951. On March 28, 1952, the Board, after a hearing, dismissed the appeal, after stating: "The record sustains a finding that the respondent [Rowoldt] has been a member of the Communist Party." His deportation from the United States is mandatory."

Rowoldt makes two contentions: (1) that the evidence is insufficient to sustain the finding upon which the deportation order was based, namely, that he was a member of the Communist Party in 1935; and (2) that the District Court erred in denying his motion to reopen the case "for the purpose of enabling him to take proper steps to have all the proceedings of the Service before the Court." The [fol. 213] second contention is obviously without merit. The burden of demonstrating both error and prejudice is upon the appellant. There is nothing in the record to show that the introduction of any of the prior deportation proceedings involving Rowoldt would have been of any help to him or would or could have had any tendency to disprove the charge which resulted in the deportation order which is challenged.

The Hearing Officer, who found that in 1935 Rowoldt was a member of the Communist Party, had in evidence the sworn testimony voluntarily given by Rowoldt before a Special Inspector of the Immigration and Naturalization Service at Minneapolis, Minnesota, on January 10, 1947. Rowoldt at that time stated that in the spring or summer of 1935 he joined both the Workers' Alliance and the Communist Party in Minneapolis; that he held no office in the Communist Party, but was on the Executive Board of the Workers' Alliance; that he was a member of the Communist Party until the end of 1935, when he was arrested [in deportation proceedings]; that he was a member of the Party for probably about a year; that he ran the Party bookstore at 241 Marquette in Minneapolis for a while; that it dealt in literature of all kinds—Strachey, Marx, Lenin's writing and that of others, "Socialism and all that stuff"; that he was kind of a salesman, but the Communist Party ran the store; that it was an official outlet for Com-

munist literature; and that he secured his employment through his membership in the Communist Party.

Enough has been said, we think, to demonstrate that there was an adequate evidentiary basis for the finding [fol. 214] that Rowoldt was a member of the Communist Party in 1935; and that " * * * the record does not show a relationship to the Party so nominal as not to make him a 'member' within the terms of the Act." *Galvan v. Press*, 347 U.S. 522, 529. There is no controlling distinction between the *Galvan* case and *Rowoldt's* case.

The order appealed from is affirmed.

[fols. 215-216] UNITED STATES COURT OF APPEALS FOR THE
EIGHTH CIRCUIT

CHARLES ROWOLDT, Appellant,

vs.

J. D. PERFETTO, Acting Officer in Charge, Immigration and Naturalization Service, Department of Justice, St. Paul, Minnesota

Appeal from the United States District Court for the District of Minnesota.

JUDGMENT—December 22, 1955

This cause came on to be heard on the original files from the United States District Court for the District of Minnesota, and was argued by counsel.

On Consideration Whereof, It is now here Ordered and Adjudged by this Court that the order of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

December 22, 1955.

[fol. 217] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 218] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 26, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(8913-6)